

**TEMPLATE FOR SUBMISSION OF TEXTUAL PROPOSALS DURING THE 28<sup>TH</sup> SESSION:  
COUNCIL - PART III**

*Please fill out one form for each textual proposal which your delegation(s) wish(es) to amend, add or delete and send to [council@isa.org.jm](mailto:council@isa.org.jm).*

**1. Name of Working Group:**

President's Text

**2. Name(s) of Delegation(s) making the proposal:**

Submitted by Nauru Ocean Resources Inc., Tonga Offshore Mining Ltd. and Blue Minerals Jamaica Ltd.

**3. Please indicate the relevant provision to which the textual proposal refers.**

Annex X, Section 4

**4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the “track changes” function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

4.1 The Contractor is hereby granted the exclusive right under this Contract to Explore for and Exploit the resource category specified in this Contract and to conduct ~~{Exploration and}~~ Exploitation activities within the Contract Area in accordance with the terms of this Contract. The Contractor shall have security of tenure and this Contract shall not be suspended, terminated or revised except in accordance with the terms ~~set out herein {and the Regulations}. {Any impacts from activities in the Area carried out under an Exploitation Contract must be strictly limited to the Contractor area.}~~

**5. Please indicate the rationale for the proposal. [150-word limit]**

- We propose deleting the language on strictly limiting impacts from activities in the Area to the Contractor area. It is not appropriate for a clause governing security of tenure and exclusivity and this issue is adequately addressed elsewhere in the Regulations.
- Furthermore, we note that “impacts” is a broad term, and it may not be feasible to have zero adverse impacts outside of a contract area. If this language is retained elsewhere in the Draft Regulations a more standard term should be used – such as Serious Harm – and appropriate language should be inserted to recognize cases where adverse impacts are unavoidable.

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Annex X, Section 5.1

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5.1 The Contractor will obtain title to and property over the Minerals upon recovery of the Minerals from the seabed and ocean floor and subsoil thereof; ~~onto the Contractor's mining vessel or installation and receipt by the Authority of the required payment for those Minerals];~~ in compliance with this Contract.

**5. Please indicate the rationale for the proposal. [150-word limit]**

- We propose deleting the reference to the receipt by the Authority of the required payment for the Minerals from Section 5.1.
- This language is problematic as it is inconsistent with the Convention, inconsistent with land-based mining best practice regimes, and, given that payment is not immediate upon recovery, would result in delays to the ability of Contractors to make use of minerals recovered.
- Article 1 of Annex III of the Convention is clear that "Title to minerals shall pass upon recovery in accordance with this Convention." There is no link here or elsewhere in the Convention between the title passing and the payment regime.
- Second, under best practice land-based mining regimes mined ore becomes the property of the miner when it is extracted from the ground. It would disadvantage deep seabed operators to diverge from this approach.
- Third, this proposed contract clause would result in problematic delays between the Contractor's recovery of minerals and their ability to exercise their property interests in such minerals. This would enormously complicate their ability to make commercial use of the resources by requiring tracking of specific payments for specific

extractions, and not making use of ownership rights of different categories of recovered minerals pending confirmation of payment.

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Annex X, Section 7.1

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7.1 ~~{In accordance with the 'polluter pays' principle,}~~ The Contractor shall be liable to the Authority for the actual amount of any damage, including damage to the Marine Environment, arising out of its wrongful acts or omissions, and those of its employees, subcontractors, agents and all persons engaged in working or acting for them in the conduct of its operations under this Contract, ~~{including the costs of reasonable measures to prevent and limit damage to the Marine Environment,}~~ ~~{arising out of its wrongful acts {or omissions}},~~ account being taken of any contributory acts or omissions by the Authority or third parties. This clause survives the termination of the Contract and applies to all damage ~~{arising out of the Contractors wrongful acts {or omissions}}~~ regardless of whether it is caused or arises before, during or after the completion of the Exploitation activities or Contract term. ~~{For the purpose of clauses 7.1 and 7.2, 'wrongful acts or omissions', means any unlawful act or omission attributable to the Contractor that results in damage not anticipated and approved in the Plan of Work, irrespective of bad intention or negligence}. {Recoverable damages under this clause include: costs of reasonable measures to prevent and limit damage to the Marine Environment, lost revenue, reinstatement, pay-out in lieu of actual reinstatement, and/or measures to compensate for third-party economic loss, as well as pure ecological loss and harm to the living resources of the Area.}~~

**5. Please indicate the rationale for the proposal. [150-word limit]**

- We maintain that there is no need to define what "recoverable damages" are under the regulations. This is overly prescriptive. Instead, we can rely on the usual principles relating to damages, to ensure that appropriate damages are able to be recovered.

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Annex X, Section 9

**4. Kindly provide the proposed amendments to the regulation or standard or guideline in the text box below, using the "track changes" function in Microsoft Word. Please only reproduce the parts of the text that are being amended or deleted.**

9.1 The Contractor may renew this Contract ~~in accordance with regulation 20.~~ for periods not more than 15 years each, on the following conditions:

(a) The resource category is recoverable annually in commercial quantities from the Contract Area;

(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;

(c) This Contract has not been terminated earlier; and

(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.

9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.

9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract shall be renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application. ~~for periods not more than 10 years each, on the following conditions:~~

- ~~(a) The resource category is recoverable annually in commercial [and profitable] quantities from the Contract Area;~~
- ~~(b) The Contractor is in compliance with the terms of this Contract and the Rules of the Authority, including rules, regulations and procedures adopted by the Authority to ensure effective protection for the Marine Environment from harmful effects which may arise from activities in the Area;~~
- ~~(c) This Contract has not been terminated earlier; and~~
- ~~(d) The Contractor has paid the applicable fee in the amount specified in appendix II to the regulations.~~

~~9.2 To renew this Contract, the Contractor shall notify the Secretary-General no later than one year before the expiration of the initial period or renewal period, as the case may be, of this Contract.~~

~~9.3 The Council shall review the notification, and if the Council determines that the Contractor is in compliance with the conditions set out above, this Contract [shall be] [may be] renewed on the terms and conditions of the standard exploitation contract that are in effect on the date that the Council approves the renewal application.~~

**5. Please indicate the rationale for the proposal. [150-word limit]**

- We consider that as the contract is the primary document establishing the legal relationship between the Contractor and the Authority it should clearly specify how it may be renewed. This will improve the certainty and clarity for the Contractor and Authority. As such, the previous contents of Section 9 should be retained.

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Annex X, Section 12.1(d)

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**Section 12**

**Suspension and termination of Contract and penalties**

12.1 The Council may suspend or terminate this Contract, without prejudice to any other rights that the Authority may have, if any of the following events should occur:  
[...]

(d) If the Contractor ~~or any person standing as surety or financial guarantor to the Contractor pursuant to regulation 26 of the regulations~~ becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other than for the purpose of reconstruction; or

(d bis) If any person standing as surety or financial guarantor to the Contractor pursuant to regulation 26 of the regulations becomes insolvent or commits an act of bankruptcy or enters into any agreement for composition with its creditors or goes into liquidation or receivership, whether compulsory or voluntary, or petitions or applies to any tribunal for the appointment of a receiver or a trustee or receiver for itself or commences any proceedings relating to itself under any bankruptcy, insolvency or readjustment of debt law, whether now or hereafter in effect, other

than for the purpose of reconstruction, and the Contractor is unable to find a suitable replacement for that person within a reasonable period of time; or

**5. Please indicate the rationale for the proposal. [150-word limit]**

- We have proposed amendments to Section 12.1 to ensure that the Contractor is provided an opportunity to find a new surety or guarantor if the initial security provider becomes insolvent.



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Annex X, Section 18

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**Section 18**

**Disputes**

~~Any dispute between the parties concerning the interpretation or application of this Contract shall be settled in accordance with Part XII of the regulations.~~

18.1 Any dispute between the parties concerning the interpretation or application of this contract shall be settled in accordance with Part XI, section 5, of the Convention.

18.2 In accordance with article 21 (2) of Annex III to the Convention, any final decision rendered by a court or tribunal having jurisdiction under the Convention relating to the rights and obligations of the Authority and of the Contractor shall be enforceable in the territory of any State party to the Convention.

**5. Please indicate the rationale for the proposal. [150-word limit]**

- We consider that the Exploitation Contract should take the same approach as the Exploration Contract in relation to dispute settlement and refer to Part XI, Section 5 of the Convention.